

## HUMAN SERVICES BOARD

# INTRODUCTION

## FINDINGS OF FACT

1. The petitioner is a woman in her seventies with a history of dental infections and other physical and mental problems. In June 2007 her dentist requested Medicaid coverage for tooth extractions and lower dentures. In his request the dentist stated that the petitioner "has some health issues and without teeth she will not be able to have the proper nutrition she needs". In a decision dated July 17, 2007, the Department denied coverage under M108.

2. Following the petitioner's appeal<sup>1</sup>, on January 18, 2008 the petitioner's treating physician submitted the following note:

This patient carries a diagnosis of gastroesophageal reflux disease, hiatal hernia, diabetes mellitus, type II, hyperlipidemia and obstructive sleep apnea syndrome. Dentures are recommended to improve the state of health of her digestive system and specifically to help her GERD/obstructive sleep apnea syndrome.

3. On February 6, 2008 the petitioner's dentist submitted an updated M108 request for dentures that included the following under "extenuating circumstances":

If patient has teeth removed she will not be able to eat nutritious meals which is very important considering she has other health issues. (Emphasis in original.)

4. On March 14, 2008 the Department issued a revised determination stating that the petitioner had not demonstrated that her nutritional needs could not be met through dietary choices and food preparation techniques.

5. On March 25, 2008 the petitioner testified as to her dental condition and health needs. At that time she submitted a statement from her mental health therapist, a licensed social worker, noting that she has struggled with depression and other physical and mental health issues, that

---

<sup>1</sup> The matter was continued until recently at the request of petitioner's counsel.

she is "ashamed, embarrassed and distressed by the state of her teeth", and that "the lack of lower dentures will inevitably lead to increased depression, isolation, despair, and distress". The report notes that if the petitioner's lower teeth were to be removed it would improve her physical health, but would be a "huge negative blow" unless she received a lower denture.

6. On March 31, 2008 the petitioner submitted a physician statement that "poor dentition leads to medical complications including recurrent infections and poor nutrition secondary to decreased food intake".

7. On July 3, 2008 the petitioner's dentist submitted a statement noting, *inter alia*, that the petitioner "will not be able to maintain good nutrition" without dentures.

8. Regarding the petitioner's *physical* health, based on the above reports it cannot be concluded that the Department abused its discretion in determining that the petitioner could effectively alleviate her pain and infections by having the affected teeth removed; and that she would be unlikely to suffer any serious health consequences if she then had to make modifications to her diet and food preparation to allow for any resulting inability to chew food. None of the

reports submitted by the petitioner contradict the Department's assessment in this regard.

9. Although the evidence regarding the petitioner's *mental* health is more problematic, it must be noted that no other medical report alludes to any significant mental health problem. While the therapist's assessment predicts a worsening of the petitioner's mental health if she cannot get dentures, it is not at all clear how severe or limiting those problems might be, or whether they could not be adequately addressed through additional therapy or medication.

ORDER

The Department's decision is affirmed.

REASONS

As a cost-saving measure, the state has eliminated coverage of dentures for all adult Medicaid beneficiaries. W.A.M. § M621.6. However, OVHA has a procedure for requesting exceptions to its non-coverage, which requires the recipient to provide information about her situation and supporting documentation. M108. OVHA must then review the information in relation to a number of criteria as set forth below:

1. Are there extenuating circumstances that are unique to the beneficiary such that there would be serious detrimental health consequences if the service or item were not provided?
2. Does the service or item fit within a category or subcategory of services offered by the Vermont Medicaid program for adults?
3. Has the service or item been identified in rule as not covered, and has new evidence about efficacy been presented or discovered?
4. Is the service or item consistent with the objective of Title XIX?
5. Is there a rational basis for excluding coverage of the service or item? The purpose of this criterion is to ensure that the department does not arbitrarily deny coverage for a service or item. The department may not deny an individual coverage of a service or item solely based on its cost.
6. Is the service or item experimental or investigational?
7. Have the medical appropriateness and efficacy of the service or item been demonstrated in the literature or by experts in the field?
8. Are there less expensive, medically appropriate alternatives not covered or not generally available?
9. Is FDA approval required, and if so, has the service or item been approved?
10. Is the service or item primarily and customarily used to serve a medical purpose, and is it generally not useful to an individual in the absence of an illness, injury, or disability?

The Board has held that M108 decisions are within the discretion of the Department and will not be overturned

unless OVHA has clearly abused its discretion by either failing to consider and address all of the pertinent medical evidence under each criterion set forth above or by reaching a result that cannot be reasonably supported by the evidence. See, e.g., Fair Hearing No. 17,547.

The Board has also recognized the importance in M108 cases of distinguishing between physical and mental health issues. In this regard the Board has specifically ruled that as a general matter neither an inability to chew food nor problems with self-esteem and the ability to interact socially are "unique" medical problems sufficient to establish "extenuating circumstances" for dentures within the meaning of the above provisions. See Fair Hearing Nos. 19,989 and 19,425.

In this case, there is no evidence that simply removing the petitioner's infected teeth will not satisfactorily resolve her ongoing problems with dental pain and infection. Tooth extractions are a covered dental service under Medicaid (W.A.M. § M621.3), although such services are limited to an annual monetary cap of \$475 (§ M621.4). In Fair Hearing No. 19,989 the Board upheld the Department's denial of an M108 exception for dentures in a case where the petitioner did not demonstrate that the lack of teeth would likely result in

serious detrimental health consequences given the availability and appropriateness of alternative means of maintaining proper nutrition (i.e., eating pureed food). In the instant case, the evidence submitted by the petitioner's medical providers does not establish that, once her infected teeth are removed, dentures would be required to maintain her *physical* health.<sup>2</sup>

As noted above, however, the questions surrounding the petitioner's mental health are more complex. In Fair Hearing No. 19,425, the Board reversed the Department's denial of an M108 exception based on uncontroverted medical evidence in that case that "dental malformations from early childhood were a focus of harassment by peers and make dental issues an emotional trigger", and that the petitioner in that case "will fall into a depressive state due to lack of front teeth" (emphasis added). In that case, unlike here, the petitioner's dentist and medical doctors specifically alluded to and agreed with the mental health provider's assessment. In this case (which was continued for over a year and a half

---

<sup>2</sup> Although this begs the question of whether the \$475 annual cap on dental services is sufficient to enable the petitioner to avail herself of the dental surgery that the Department appears to concede is medically necessary, the petitioner might well be eligible for General Assistance (GA) coverage to make up the difference. See Fair Hearing No. 19,835. If the petitioner is denied GA under these circumstances, she is free to appeal that decision.

to allow the petitioner to obtain further medical documentation of her condition) it cannot be concluded that the scant medical evidence submitted regarding the petitioner's mental health issues demonstrates a similar uniqueness and likelihood of severe detrimental health consequences. As ruefully noted in Fair Hearing No. 20,275, depression is a predictable and common result of any disfigurement. Unfortunately, however, it has been held that the M108 criteria (*supra*) require a significantly more dire prognosis.

The petitioner is, of course, free to obtain a more detailed and thorough mental health assessment. However, based on the evidence that has been submitted to date on the petitioner's behalf, it cannot be concluded that OVHA has abused its discretion in its assessment that the petitioner has not demonstrated that, once her infected teeth are removed, *either* her physical or mental health is likely to *worsen* significantly if she is not provided with dentures. In light of the above, the Board is bound to affirm the Department's decision. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

# # #